

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ROBERTO SALDANA, JR.,

Petitioner,

v.

M. E. SPEARMAN, Warden,

Respondent.

Case No. 1:22-cv-00140-SKO-HC  
Case No. 1:21-cv-01733-HBK-HC

ORDER DIRECTING CLERK OF COURT  
TO FILE PETITION [ECF #1] FROM CASE  
1:22-cv-00140-SKO-HC IN CASE 1:21-cv-  
01733-HBK-HC AS FIRST AMENDED  
PETITION

ORDER ADMINISTRATIVELY CLOSING  
CASE 1:22-cv-00140-SKO-HC

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On November 22, 2021, Petitioner filed a petition for writ of habeas corpus in the United States District Court for the Central District of California. On December 4, 2021, the Central District Court ordered the case transferred to the Eastern District Court. On December 7, 2021, the case transferred and assigned case number 1:21-cv-01733-HBK-HC.

On January 20, 2022, Magistrate Judge Helena M. Barch-Kuchta issued an order directing Petitioner to submit a declaration, signed under penalty of perjury, indicating that he had submitted the petition. Instead of submitting a signed declaration, on February 2, 2022, Petitioner submitted a signed copy of his petition. However, Petitioner did not place his current case number on the petition or indicate that he was submitting it in response to the Court's order.

1 Therefore, the Clerk of Court opened a new case and assigned the petition case number 1:22-cv-  
2 00140-SKO-HC.

3 “[W]here a new pro se petition is filed before the adjudication of a prior petition is  
4 complete, the new petition should be construed as a motion to amend the pending petition rather  
5 than as a successive application.” Woods v. Carey, 525 F.3d 886, 888-890 (9th Cir. 2008). But  
6 where the claims have already be denied in the previously-filed action, the new petition is  
7 construed as a second or successive petition under 28 U.S.C. § 2244(b). Beaty v. Schriro, 554  
8 F.3d 780, 782-83 (9<sup>th</sup> Cir.2009).

9 In this case, the petition filed in case number 1:21-cv-01733-HBK-HC had not been  
10 adjudicated when the second action was commenced. It also appears that the new petition was  
11 meant to be a response in compliance with the Court’s order to submit a signed declaration.  
12 Therefore, the Court will order the petition filed in case number 1:22-cv-00140-SKO-HC to be  
13 filed as a First Amended Petition in case number 1:21-cv-01733-HBK-HC.

14 **ORDER**

15 Based on the foregoing, IT IS HEREBY ORDERED that:

16 1) The Clerk of Court is DIRECTED to FILE the Petition (ECF No. 1) from Case No. 1:22-  
17 cv-00140-SKO-HC in Case No. 1:21-cv-01733-HBK-HC as a First Amended Petition;

18 2) The Clerk of Court is DIRECTED to ADMINISTRATIVELY CLOSE Case No. 22-cv-  
19 00140-SKO-HC; and

20 3) Petitioner is INSTRUCTED that all future pleadings should be identified by the case  
21 number 1:21-cv-01733-HBK-HC.

22 IT IS SO ORDERED.  
23

24 Dated: February 3, 2022

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE